



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,241	06/09/2006	Young-Hoon Park	3884-0127PUS1	2866
2292 7590 06/01/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER NGUYEN, QUANG	
			ART UNIT 1633	PAPER NUMBER
			NOTIFICATION DATE 06/01/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/582,241</p>	<p>Applicant(s) PARK ET AL.</p>	
	<p>Examiner QUANG NGUYEN, Ph.D.</p>	<p>Art Unit 1633</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/QUANG NGUYEN/
Primary Examiner, Art Unit 1633

Continuation of 3. NOTE: The scope of proposed claims is not the same as that of finally rejected claims, particularly with the limitation "An isolated DNA clone" and various amendments in the proposed amended claim 2, which would require further consideration and/or search. Additionally, proposed claim 4 would necessitate a new ground of rejection, such as 112, second paragraph, particularly for the limitation "DNA clone encoding a threonine importer consisting of a sequence expressed by a continuous DNA sequence". How can a sequence of a DNA clone (a DNA sequence) be expressed by another continuous DNA sequence?

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are moot since they are directed mostly to proposed amended claims which were not entered for the reason already set forth above. Following are examiner's responses related in part to Applicant's arguments directed to the cited prior art rejections of Nakagawa et al (US2002/0197605) and Pompejus et al (US 6,696,561).

1. With respect to the rejection under 35 U.S.C. 102(b) as being anticipated by Nakagawa et al., Applicants argue basically that the reference has sequenced the entire *Corynebacterium glutamicum* genome while the present invention is drawn to a defined nucleic acid sequence corresponding solely to the threonine importer gene from *Corynebacterium glutamicum*, and not the entire genome. Additionally the Nakagawa reference does not recite a threonine importer gene.

Until the scope of the new limitation "an isolated DNA clone" is evaluated, it should be noted that as written the claim does not necessarily limit to a DNA sequence containing a continuous DNA sequence from the 1,772 base to the 3,025 base among DNA sequences with SEQ ID NO:1; and that it may encompass additional DNA sequences at either end of the continuous DNA sequence. As such, the disclosed SEQ ID NO:1 of Nakagawa et al comprises nucleotides 3,231,051 to 3,232,304 that is 100% identical to the continuous DNA sequence as claimed.

2. With respect to the rejection under 35 U.S.C. 102(e) as being anticipated by Pompejus et al., Applicants argue basically that the reference does not meet all of the limitation of claim 4, specifically consisting to the entire region of the 1,772 base to the 3,025 base among DNA sequences with the SEQ ID NO:1.

Once again, in addition to the evaluation of the new limitation "an isolated DNA clone" it should be noted that as written the claim encompasses a DNA encoding a threonine importer consisting of a sequence (any sequence), not necessarily limited to the sequence from the 1,772 base to the 3,025 base of SEQ ID NO:1 as argued by Applicants. As such, SEQ ID NO:543 of Pompejus et al would encompass an embodiment of the claim as broadly written.